

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS

**ORIGINAL**

1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D. C. 20036

(202) 955-9600

FACSIMILE

(202) 955-9792

NEW YORK, N.Y.  
LOS ANGELES, CA.  
MIAMI, FL.  
CHICAGO, IL.  
STAMFORD, CT.  
PARSIPPANY, N.J.

BRUSSELS, BELGIUM  
HONG KONG

AFFILIATED OFFICES  
NEW DELHI, INDIA  
TOKYO, JAPAN

DOCKET FILE COPY ORIGINAL

EX PARTE ON FILE

WRITER'S DIRECT LINE

(202) 955-9779

August 11, 1997

William F. Caton, Acting Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

**RECEIVED**

AUG 11 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

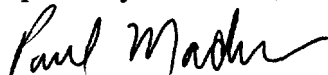
Re: Notification of *Ex Parte* Presentation  
CC Docket No. 96-98

Dear Mr. Caton:

In response to the Commission's Public Notice entitled "Common Carrier Bureau Seeks Recommendations On Commission Actions Critical To the Promotion Of Efficient Local Exchange Competition" dated July 18, 1997 (DA 97-1519), Paging Network, Inc. ("PageNet") filed its written recommendations with the Commission today, August 11, 1997. A copy of PageNet's recommendations are enclosed herewith.

Because PageNet's recommendations may effect the merits or outcome of the above-referenced proceeding, pursuant to Section 1.1206(b)(1) of the Commission's Rules, PageNet hereby submits an original and two copies this *ex parte* notification for inclusion in the public record.

Respectfully submitted,

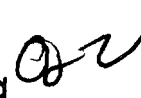


Paul G. Madison  
Attorney for Paging Network, Inc.

Enclosures

## DC01/MADIP/47219.41

No. of Copies rec'd  
List ABCDE



**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS

1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D. C. 20036

(202) 955-9600

FACSIMILE

(202) 955-9792

NEW YORK, N.Y.

LOS ANGELES, CA.

MIAMI, FL.

CHICAGO, IL.

STAMFORD, CT.

PARSIPPANY, N.J.

BRUSSELS, BELGIUM

HONG KONG

AFFILIATED OFFICES

NEW DELHI, INDIA

TOKYO, JAPAN

August 11, 1997

JUDITH ST. LEDGER-ROTY

DIRECT LINE (202) 955-9879

E-MAIL: jstledgerrody@kelleydrye.com

Mr. William Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: CCBPOL 97-9  
Recommendations on FCC Action Required for  
Development of Local Competition

Dear Mr. Caton:

On behalf of Paging Network, Inc. ("PageNet"), we are responding to the FCC's *Public Notice* (DA 97-1519) on July 18, 1997 soliciting recommendations on key actions that the FCC should take to speed the development of competition in local telecommunications markets. PageNet, the nation's largest paging carrier, assigns the highest priority to the following actions, presented in order of priority. However, all of the items listed herein are of critical importance to PageNet, in particular, and the paging industry, in general. By expressly identifying the following initiatives, PageNet does not suggest that additional actions beyond those addressed herein would not also speed the development of local competition and promote the treatment of paging carriers in the same way as other providers of local telecommunications services.

The Common Carrier Bureau requested that parties responding to the *Public Notice* not submit detailed argumentation in support of these key action items. As such, PageNet has presented summary positions herein.

A. *Enforcement of the FCC's Rules*

The most important step that the Commission could take to promote the emergence of local competition against the incumbent local exchange carriers ("ILECs") is to

Mr. William Caton

Page 2

August 11, 1997

provide for effective enforcement of its regulations. Specifically, while it is necessary that the Commission establish the groundwork for local competition consistent with its jurisdiction by adopting appropriate rules, it is just as critical that procedures be in place whereby competitors can obtain swift results when they find that those regulations are being violated. It is PageNet's perception that ILECs can and are making calculated decisions to put off compliance with the Commission's rules: the ILECs may conclude that the delay and resulting adverse impact on competitors from non-compliance justifies whatever monetary damages, if any, are ultimately awarded, often years later.<sup>1</sup> In the interim, the development of local competition is seriously hampered. Alternatively, ILECs are seizing upon any excuse to avoid compliance with effective Commission rules. For example, where the related rule is pending review, the ILECs will cite to that fact as justification for not complying with the rule.

Consequently, the Commission should adopt procedures that routinely treat requests for enforcement of the Commission's rules on matters regarding local competition on an expedited basis.<sup>2</sup> Moreover, the Commission should consider its authority to put more teeth into its remedial provision for actions that hinder local competition so as to increase incentives for compliance. Such remedies could include double, treble, or punitive damages, or restrictions, in appropriate circumstances, of an offender's ability to provide

---

<sup>1</sup> On May 30, 1997, LCI International Telecom Corp. and the Competitive Telecommunications Association filed a petition for expedited rulemaking seeking the establishment of clearer Commission regulations regarding the ILECs operations support systems ("OSS") responsibilities (RM 9101). The record developed in response to that petition made clear that a number of new entrants into the local exchange marketplace perceive the ILECs as treating any penalties they expected the FCC might assess for the ILECs' failure to fulfill their obligations to provide OSS functions on a reasonable, non-discriminatory basis as "merely a cost of doing business."

<sup>2</sup> A model could be the expedited schedule adopted in *American Communications Services, Inc. v. BellSouth Corporation*, File No. E-97-09, in which ACSI sought relief for BellSouth's alleged failure to provide unbundled loops and telephone number portability. In that case, the complaint was filed in January, 1997, and briefing was originally scheduled for completion in early May. (Settlement discussions engendered extensions of the schedule.) While ACSI's putative reason for the expedited schedule was the expectation that BellSouth would shortly be seeking Section 271 authority to provide in-region interLATA services in Georgia, the underlying concern for the potential impact of BellSouth's actions on local competition argues for an expedited review regardless of whether there is an apparent tie-in to a Section 271 filing. In addition to expedited pleading, discovery, and briefing schedules, the Commission should set an outside date for reaching a decision on complaints as well.

Mr. William Caton

Page 3

August 11, 1997

service.<sup>3</sup> For ILECs seeking Section 271 in-region interLATA authority, the Commission should place a special emphasis on consistent, systematic compliance with the Commission's rules affecting local competition under the public interest test of Section 271(d)(3)(C) in all of the ILECs' markets. The bottom line is, while it is critical for the FCC to adopt rules promoting local competition, the only true measure of their effectiveness is the speed and definition with which they will be enforced.

The Commission should use the existing vehicle of its pending rulemaking on its complaint procedures, CC Docket No. 96-238, to consider the procedures herein urged by PageNet.

*B. Southwestern Bell Request for Ruling on Charges for the Delivery of LEC-Originated Local Traffic to Paging Carriers.*

The Commission should quickly and clearly deny the request by Southwestern Bell Telephone Company for a ruling on the propriety of charges for the delivery of local telecommunications traffic to paging carriers for termination.<sup>4</sup> As the record developed in response to that request demonstrates (CCB/CPD 97-24), incumbent local exchange carriers had used the pending Eighth Circuit decision on the *First Report and Order* in CC Docket No. 96-98, and continue to use the pending Southwestern Bell request, to assess unlawful charges on paging carriers. Moreover, on the same grounds, several of these ILECs threaten termination of interconnection against carriers that refuse to pay such charges. Alternatively, some ILECs have refused or threatened to refuse to provide additional interconnection or DID facilities unless such improper charges are paid. With the issuance of the Eighth Circuit's decision, any doubt that might have existed regarding the impropriety of these charges under the FCC's rules has been removed. (PageNet submits that Section 51.703(b) of the Commission's rules, which was in effect pending the Court's decision, made clear charges for the delivery of local traffic to paging carriers were impermissible.) Nonetheless, despite the Court's decision upholding key Commission reciprocal compensation regulations affecting CMRS-LEC interconnection, ILEC behavior has remained essentially unchanged. *See Iowa Utilities Board v. FCC*, Nos. 96-3321 *et al.*, slip op. n. 23 (8th Cir. July 18, 1997). Given the continued intransigence of many RBOCs and other ILECs on this point, a swift, unequivocal decision by the Commission to the effect that such charges are unlawful

---

<sup>3</sup> For example, a number of parties in response to the LCI/CompTel petition on OSS (RM 9101) urged the Commission to adopt regulations providing for restrictions on ILECs' ability to take interexchange orders if they fail to comply with the Commission's OSS Rules.

<sup>4</sup> See Letter of Paul Dorrin, Southwestern Bell, to Regina Keeney, Chief, Common Carrier, Bureau, dated April 25, 1997. The Southwestern Bell letter and the consolidated response of PageNet and several other carriers were put on public notice on May 22, 1997. DA 97-1071.

Mr. William Caton  
Page 4  
August 11, 1997

and that the ILECs must stop assessing them is sorely needed if paging carriers are to be treated on the same basis as other carriers providing local telecommunications services.

C. *Petition for Reconsideration Regarding Provision of Telephone Exchange Service by Paging Carriers.*

The Commission should also resolve the petitions for reconsideration filed by PageNet of the *First Report and Order* and the *Second Report and Order* in CC Dockets Nos. 96-98 regarding the determination by the Commission in those orders that paging service is not "telephone exchange service." Resolution of these petitions in PageNet's favor by finding, consistent with a long history of FCC decisions, that paging service is "telephone exchange service" is absolutely essential to ensuring that paging carriers are treated by ILECs in a manner that is comparable with other commercial mobile radio service ("CMRS") providers, such as cellular, PCS, and SMR carriers for purposes of interconnection. Until a resolution of this reconsideration issue is achieved, paging carriers will continue to be treated by many ILECs as second-class citizens for purposes of interconnection relative to other CMRS carriers, many of which also provide paging services in competition with PageNet and other paging carriers. Thus, in the absence of a Commission decision, paging carriers' competitive position vis-a-vis CMRS providers that also provide two-way mobile services will continue to be adversely affected.

D. *Clarifying the Commission's Jurisdiction Over CMRS-LEC Interconnection*

The decision of the Eighth Circuit on review of the Commission's *First Report and Order* in CC Docket No. 96-98 made clear that the Commission has the authority under the Communications Act of 1934, as amended, to adopt rules regarding interconnection between paging carriers (and other CMRS carriers) and LECs. *Iowa Utilities Board, supra*, n.23. This authority extends to rules regarding the rates, if any, that CMRS providers and LECs may charge, if any, for such interconnection and the delivery of traffic between the two types of carriers for transport and termination. Because Section 332(c)(3) denies states the ability to set CMRS rates, it is necessary for the Commission to swiftly provide direction in this area so that CMRS providers, including paging carriers, may proceed to work toward interconnection and compensation arrangements that are appropriate and pro-competitive. Therefore, the Commission should determine what is the proper basis for transport and termination rates between CMRS providers and LECs. (PageNet believes that Section 332(c)(3) makes it clear that the Commission has the authority to establish such rates if the parties cannot agree to them.) In addition, the Commission should determine whether the

Mr. William Caton  
Page 5  
August 11, 1997

rates other CMRS carriers charge are the rates that paging carriers are entitled to charge the LECs.<sup>5</sup> (PageNet submits they are.)

*E. Petition for Reconsideration Regarding Number Code Relief*

Existing practices of NXX code relief disproportionately affect wireless services, in general, and paging carriers and their customers, in particular. Accordingly, PageNet sought reconsideration of the FCC's failure to address such issues in the *Second Report and Order* in CC Docket No. 96-98. Largely as a result of wireless carriers' ability to assign numbers without regard to a subscriber's geographic location, wireless carriers use numbering resources more efficiently than wireline carriers, with NXX code fill factors typically in excess of 90 percent. As a result, when paging carriers need new NXX codes, their need is urgent because they do not have a reserve of numbers to fall back upon as a result of an excess created by inefficient use of numbers. Unfortunately, many of the area code administrators charged with developing and implementing code conservation measures adopt procedures that are much more likely to result in a denial of NXX codes to paging services rather than wireline services. Therefore, pursuant to its plenary jurisdiction over numbering matters, the Commission should act quickly to grant PageNet's petition for reconsideration to address the problem of delayed area code relief and the discriminatory aspects of code conservation measures that disfavor wireline carriers.<sup>6</sup>

---

<sup>5</sup> Regarding this issue, PageNet has outstanding a petition or reconsideration of the *First Report and Order* in Docket No. 96-98, which seeks the creation of a mechanism allowing paging carriers to obtain immediate compensation so as to ensure equal treatment with cellular, PCS, and SMR carriers for providing the same transport and termination functions for LEC-originated traffic. The Commission should adopt such a mechanism as PageNet has requested, to ensure that paging carriers are compensated *now* for their costs which they continue to incur. Such a mechanism will put paging carriers on a par with other CMRS providers -- many with whom paging carriers compete for paging customers -- by giving paging carriers rights similar in result to Section 51.717 of the Commission's rules. (That section provides CMRS providers with pre-existing compensation arrangements with ILECs a mechanism to be compensated immediately.) This compensation mechanism could be replaced or modified by the Commission in the proceeding promised by the Commission to address paging-LEC interconnection in the *First Report and Order* in CC Docket No. 96-98 (¶ 1093).

<sup>6</sup> When resolving this aspect of the PageNet petition for reconsideration of the *Second Report and Order*, the Commission should also address the following matters raised by the petition, which are also important to the paging industry's continued ability to compete vigorously with CMRS providers and other carriers offering telephone exchange services: the FCC should modify its rules to remove the conditioning of all service overlays on the availability of an existing NXX code for assignment to each existing carrier during the 90-

Mr. William Caton  
Page 6  
August 11, 1997

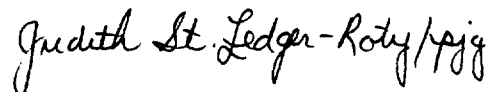
*F. Code Opening Fees*

On July 31, 1997, the Commission issued a "Request for Information" to collect information to supplement the record in CC Docket No. 96-98 on the issue of code opening fees. This is a timely request. PageNet urges to Commission to use the information collected promptly to clarify what the LECs can and cannot assess charges for with respect to CO code activation and assignment. Such an action should contribute to ending abuses regarding charges for CO codes and numbers that have persisted despite the Commission's clear direction in the *Second Report and Order* in CC Docket No. 96-98. Such abuses have only made it that much more difficult for local competition to emerge in some areas and have dampened the ability of paging carriers to obtain numbers free from discrimination and unlawful charges.

Copies of this letter are being filed as *ex parte* presentations in Docket No. 96-98, 96-238, and CCB/CPD 97-24 pursuant to the *Public Notice*.

Please contact the undersigned if there are any questions concerning the matters discussed in this letter.

Respectfully submitted,



Judith St. Ledger-Roty  
Edward A. Yorkgitis, Jr.  
Attorneys for Paging Network, Inc.

---

<sup>6</sup>(...continued)

day period preceding the implementation of the overlay. The current rule could needlessly prevent the use of relief NXX codes taken from the new area code on an overlay basis pending final action on area code relief, resulting in artificial code shortages which inherently disadvantage wireless carriers in a discriminatory fashion, as explained above. The Commission should also make clear that the take back of Type 2 wireless numbers cannot be made mandatory in the event of a geographic split. The current rule arbitrarily conflicts with the choice of wireless subscribers, many of whom may seek to keep their old numbers, despite the split.